CURRENT DECISIONS

CONTRACTS—ILLEGALITY—ARBITRATION AGREEMENTS.—By the terms of the New York Statute "a provision in a contract to settle by arbitration a controversy thereafter arising . . . shall be valid, enforceable, and irrevocable." . . . The plaintiff in disregard of such a provision in the contract brought an action for a breach without referring to arbitration. *Held,* that the statute was constitutional and that the plaintiff could not recover. *In re Berkovitz v. Arbib & Houlberg* (1921) 230 N. Y. 261, 130 N. E. 288.

The instant case, under the statute, is in line with the growing tendency toward the recognition of the validity of all arbitration agreements. Such agreements are not in fact contrary to public policy as ousting courts of jurisdiction, for an unfair award could only be enforced by recourse to the court, while in the case of a fair award, the parties have settled the very matters which otherwise would have been litigated. Furthermore there is no objection to making arbitration agreements irrevocable, since equity will enjoin an action for the enforcement of an unfair award. See Anson, *Contract* (Corbin's ed. 1919) sec. 251 a. See also supra, p. 862.

INSURANCE—RIGHTS OF BENEFICIARIES—RIGHTS OF CREDITORS WHERE INSURED RESERVES POWER TO CHANGE BENEFICIARY.—The insured was the holder of a policy in which his wife was beneficiary, the power to change the beneficiary, with the consent of the insurer, having been reserved by the insured. The trustee in bankruptcy of the insured demanded the surrender value of the policy from the insurer, who contended that it could refuse to consent to a change of beneficiary. *Held,* that the trustee's claim could not be defeated by the company's refusal. Ward, J., *dissenting. In re Greenberg; Petition of Hancock Mut. Life Ins. Co.* (Jan. 14, 1921) U. S. C. C. A. 2d, Oct. Term, 1920, No. 112.

A beneficiary gets merely an expectancy where the insured reserves the power to change the beneficiary. Vance, *Insurance* (1904) 399; 2 Joyce, *Insurance* (2d ed. 1917) sec. 740; see also (1918) 28 YALE LAW JOURNAL, 89. The retention of the power to change the beneficiary gives rights to the creditors superior to those of the beneficiary. *Cohen v. Samuels* (1917) 245 U. S. 50, 38 Sup. Ct. 36. A general power of appointment, the non-execution of which is not aided at common law, when retained by the insured, is made assets by section 70-a of the Bankruptcy Act, it being a power which the donee might have exercised for his benefit. The principal case extends the decision in *Cohen v. Samuels, supra,* in which case the consent of the insurer to a change in the beneficiary was not stipulated for in the policy. As to the validity of the requirement of the insurer's consent to a change of beneficiary, see (1918) 27 YALE LAW JOURNAL, 957.

QUASI-CONTRACTS—CONTRIBUTION BETWEEN JOINT TORT-FEASORS.—The plaintiff obtained a judgment against the White Bus Line and one Stiles, jointly, for injuries inflicted by their concurrent negligence. The Bus Line was insured and the insurance company paid the judgment, but, instead of entering satisfaction thereon, assigned it to the Bus Line. Stiles applied to the court for an order directing satisfaction to be entered. An order was made as requested and the Bus Line appealed. *Held,* that Stiles was entitled to the order, on the ground that contribution would not be allowed between joint tort-feasors. *Adams v. White Bus Line* (1921, Calif.) 195 Pac. 389.

The so-called general rule upon which the court rests its decision—if it ever was the law—has had so many exceptions grafted upon it that it is now general

only in name. See (1921) 30 YALE LAW JOURNAL, 527. While the majority of cases still deny contribution where the joint wrong was merely negligent, there is a strong and growing minority which allows contribution in all cases except of conscious or wilful wrongdoers. Cf. *Hobbs v. Hurley* (1918) 117 Me. 449, 104 Atl. 815.

TORTS—NEGLIGENCE—ATTRACTIVE NUISANCE.—The defendant maintained electric wires across the top of a bridge and about 24 feet above the roadway. There was evidence that small boys had, to the knowledge of the defendant, climbed up on the girders at the top of the bridge. The plaintiff, a boy of eight, climbed up there to get a pigeon's nest. He saw a pigeon on one of the defendant's wires and reached out to catch it. In so doing he touched a live wire and received the injuries for which this action was brought. *Held,* that the plaintiff could recover, on the ground that the wires, in connection with the surrounding circumstances, constituted an "attractive nuisance." *N. Y., N. H., & H. Ry. v. Fruchter* (Feb. 9, 1921) U. S. C. C. A. 2d, Oct. Term, 1920, Nos. 152-153.

The attractive nuisance doctrine does not apply where the property owner could not carry on his lawful business in the necessary and ordinary manner and at the same time safeguard trespassing children. See (1915) 25 YALE LAW JOURNAL, 84. If an electric wire on the top of a bridge 24 feet high is an attractive nuisance, it is difficult to see how a landowner can escape liability for any injury which trespassing children incur on his premises. On similar facts a recent well-considered case reached the opposite result. *Davis v. Malvern Lt. & Power Co.* (1919, Iowa) 173 N. W. 262, discussed in COMMENTS (1919) 29 YALE LAW JOURNAL, 223.

TORTS—RIGHT OF PRIVACY.—The plaintiff had presented the defendants' predecessors in title with a portrait bust of himself to be used as a trade-mark. The defendants later published the features of the bust placed on the body of a foppish figure for advertisement. The plaintiff obtained leave to serve a writ of summons upon the defendants in an action for an injunction to restrain this publication. The defendants' motion to set aside this writ was discharged by the lower court, and the defendants brought this appeal. *Held,* that the appeal be dismissed, since it had not been shown that the lower court had proceeded upon any wrong principle. *Dunlop Rubber Co., Ltd. v. Dunlop* (1920, H. L.) 37 T. L. R. 245.

The decision, in recognizing that the exhibition of these pictures "amounted to something which was at least capable of a defamatory meaning," seems to be enforcing what American courts term "the right of privacy." For an early discussion see Warren and Brandeis, *The Right to Privacy* (1890) 4 HARV. L. REV. 193. See also COMMENTS (1920) 29 YALE LAW JOURNAL, 450 (discussing the New York statute); COMMENTS (1919) 28 *id.* 269; COMMENTS (1910) 20 *id.* 149; COMMENTS (1908) 18 *id.* 123.